

**WILLIAMSBURG
BOARD OF ZONING APPEALS
MINUTES**

April 1, 2003

The regular meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, April 1 at 3:00 p.m. in the Williamsburg Municipal Building, 401 Lafayette Street.

ATTENDANCE

Present were Board members Carr, Kafes, Chohany, Knudson and White. Mrs. White arrived after approval of the minutes. Also present were Zoning Administrator Murphy and Secretary Scott.

CALL TO ORDER AND MINUTES

Chairman Carr called the meeting to order.

Mrs. Knudson moved that the minutes of the February 4 and March 4, 2003 meetings be approved. The motion was seconded by Mr. Chohany and carried by roll call vote of 4-0.

PUBLIC HEARINGS

The first case on the agenda, **BZA #03-05**: Request of Colonial Williamsburg Foundation for a special exception to move an existing privy structure from 309 East Nicholson Street (Carpenter's Yard Privy) to 401-E East Nicholson Street (Brickyard), was moved to the end of the public hearing to allow a representative to arrive.

BZA #03-06: Request of Sandra and Steven Zareski for a special exception to allow the rental of four bedrooms to visitors in accordance with Section 21-605 of the Zoning Ordinance for property located at 708 Richmond Road, Williamsburg Tax Map Number 434-(06)-0F-011, zoned Single Family Dwelling District RS-2. The applicants are constructing an addition on the dwelling and are requesting to relocate one of the four existing bedrooms rented to visitors into the addition. Approved.

On behalf of the Board, Chairman Carr apologized to the Zareskis for the delay last month in hearing their request due to the lack of a quorum.

Paul White, designer for the project, was present and noted that the request is to relocate one of the four previously approved bedrooms in the dwelling to a new

addition. The addition will consist of a garage and bedroom over the garage. The existing detached garage will be removed. Mr. White responded to a number of questions from Board members as to the exact nature of the proposed addition.

Mr. Carr opened the public hearing.

There being no comment the public hearing was closed.

Mrs. Knudson moved that the request be approved based on fulfillment of Section 21-605(c) of the Zoning Ordinance which states:

- a. It is designed, constructed and operated to adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property;
- b. It does not unreasonably impair an adequate supply of light and air to adjacent property;
- c. It does not increase the public danger from fire or otherwise unreasonably restrict public safety; and
- d. It does not impair the established property values in surrounding areas.

and with the following conditions:

1. That screening of the parking area be acceptable to Planning Department staff, and
2. That the plans be modified in accordance with the building code requirements that were discussed at the February 28, 2003 plan review with the City of Williamsburg's Building Official.

Mr. Chohany seconded the motion which carried by roll call vote of 5-0.

Aye: Carr, Chohany, Kafes, Knudson, White

No: None

Absent: None

BZA #03-07: Request of George Thorpe for a variance from the lot width requirement of Section 21-166 of the Zoning Ordinance to combine parcel 3 and parcel 2 into one lot having 16.8 feet of lot width instead of 25 feet as required by the Zoning Ordinance at 119 Matoaka Court. The properties are zoned Single Family Dwelling District RS-2 and are located on Williamsburg Tax Map Number 434-03-0B-001B,2*. Denied.

Chairman Carr introduced the request for a variance and invited the applicant to comment.

George Thorpe spoke in favor of the request stating his primary residence is in Pennsylvania, and that he also has a second residence in Virginia. He added

that he has been coming to Williamsburg since 1938 and considers this area his second home. Mr. Thorpe continued by giving a brief history of the three parcels, parcel one being rented for the last 40 years. He said he and his sister, Marjorie McClanahan, have been paying real estate taxes on the properties for years, and have decided to combine the two parcels (parcels two and three) and sell the resulting lot for construction of a single family residence. He noted that the mandatory setbacks would be mostly out of the Resource Protection Area.

With regard to the Resource Protection Area, Mr. Kafes stated his opinion that the relief afforded by Section 21-821(d)(5)(b) would not apply to a combination of parcels 2 and 3 into a new lot of record inasmuch as the new lot would not have been recorded prior to October 1, 1989 as required by the literal language of the provision.

In response to Mr. Chohany's query, Mrs. Murphy responded that there would need to be some encroachment into the RPA depending on the footprint of the house.

Chairman Carr opened the public hearing. He stated that the Board had received a number of communications regarding the application and that these had been distributed to Board members and would be included as part of the record of the meeting.

Inge Curtis, 706 Richmond Road and chairman of the neighborhood association, stated that although she is not speaking on behalf of the association, but only for herself, she has received summary letters from participants at the association meetings where general opposition to the Thorpe/McClanahan request was voiced. She added that she is an ardent environmentalist and encourages the Board to preserve the green space.

John Levy, 7847 Paynes Landing Road, Gloucester, Va, owner of 208 Matoaka Court, stated that he lived for many years at the Matoaka Court home, and although he sent a letter to the Zoning Administrator regarding this case, he would like to address additional issues as raised in the staff-prepared memorandum. Mr. Levy questioned quoted code Sections in the memorandum, to which Zoning Administrator Murphy responded the Sections quoted are City Zoning Ordinance sections, not state code.

He continued by saying denial of this variance will not produce undue hardship, one of the requirements of the statute. In addition, the property was inherited, not purchased by the current owners and that as noted in the staff memorandum, Section 21-97(b)1. "When a property owner can show that his property was acquired in good faith ..." doesn't apply due to this fact. But because the driveway slopes down causing drainage into the neighbor's basement, approval of this variance **will** cause a substantial detriment to adjacent property.

According to the above-noted Section, there are three requirements of the statute and all three must be met; this variance request is not near meeting the requirements.

Bill Hamilton, 212 Matoaka Court, said he had sent an e-mail to the Zoning Administrator but would also like to speak today. Mr. Hamilton submitted petitions of signatures of residents on Brooks Street and Matoaka Court opposing the granting of the variance. He stated that he hoped the Board had a close look at the Matoaka Court neighborhood, particularly the first block where there are seven student rentals. Mr. Hamilton expressed concern that after the single family residence is constructed it may become yet another rental.

Cathie Allport, 115 Matoaka Court, stated that her family has lived here since 1979 and there is already a hardship borne by the neighbors of this property because it is not maintained. The Thorpe house at 119 Matoaka Court is currently rented to college students. The neighborhood currently has a number of rentals and if a house is built on the resultant combined lot, it will probably become a rental. The concern is that this will only add to the excessive number of rentals, students and cars in the neighborhood and, since the majority of the parcel lies within a Resource Protection Area buffer, development will add to the run-off into Lake Matoaka. She concluded her comments by saying that it is impossible to provide an area equal to the area encroaching on the buffer area elsewhere on the lot or parcel in a way to maximize water quality protection.

Alice Barnes, 121 Matoaka Court, stated that she has lived in her home for 38 years and would rather not move. She said it is noisy in the neighborhood and there is a lot of water that drains into the properties. Mrs. Barnes noted that she and her husband had asked Mr. Thorpe for assistance with installing a necessary ditch to alleviate the drainage problem onto their property, but to no avail.

Anita Ferrara, 9561 Barnes Road, Toano, Alice Barnes' daughter, said that she grew up in the Matoaka Court house and reiterated her mother's concern about an increase in the already noisy neighborhood. She added that consideration should be given to long-term residents. Mrs. Ferrara showed the location of the above-mentioned ditch to the Board and agreed that increased run-off would exacerbate the drainage problems in the community.

Mary LeGouellec, 117 Matoaka Court, submitted petitions signed by residents of Matoaka Court and Brooks Street. The petitions ask that the variance request be denied. She noted that regarding the hardship issue, the property was inherited, not "... acquired in good faith" Variance approval would be detrimental to adjacent property since the majority of the second parcel lies within the Resource Protection Area buffer. Ms. LeGouellec also stated that granting this variance would establish a precedent for developing land in the ravine between Matoaka Court and Brooks Street. She said that developments in these areas would

drastically reduce the amount of green space that makes Matoaka Court unique, and could bring down the value of the homes in the neighborhood. She concluded by saying that she is just beginning her home and family, and chose Williamsburg and this neighborhood partly due to the available green space. She asked that the Board not approve this variance.

Richard Sherman, 205 Matoaka Court, stated that the devaluation of the property in his neighborhood is a deep concern of the residents and he asked that the Board deny the request.

Braxton Allport, 115 Matoaka Court, briefly summarized comments made by his neighbors and asked that the Board deny the request for a variance.

There being no additional comment the public hearing was closed.

Comments from the Board included:

- Mrs. White stated that regarding the hardship point in the list of criteria, Section 21-97(b)2, the applicant has the burden of proof. She said she would deny the request since it does not fulfill the third item in this list which states "That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance."
- Mr. Chohany noted the "raw land" and green space in this neighborhood and confirmed that only the property will be for sale, not the dwelling on parcel one. He asked if there are any similar situations in the City. Mrs. Murphy responded that there is another at the corner of Mt. Vernon and Matoaka Court that shows as two parcels, but she found no others in her research.
- Mrs. Knudson said she would oppose the request because the neighbors present a very compelling argument. She added congestion and the issue of a precedent being established are concerns.
- Mr. Kafes said he would oppose the request because it is totally out of character with the neighborhood as first platted in 1938. Neither of the two parcels are buildable under the Zoning Code nor would they be if combined. To grant the requested variance would result in a residence being built in the "backyard" and would be a detriment to the adjacent property owners and the symmetry of the neighborhood.

Mrs. White moved that the request be denied based on Zoning Ordinance Section 21-97(b)2. which states that "No such variance shall be authorized by the Board unless it finds:

- a. That the strict application of this chapter would produce undue hardship.

- b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.”
- which findings the Board is unable to make.

Mrs. Knudson seconded the motion which carried by roll call vote of 5-0.

Aye: Carr, Chohany, Kafes, Knudson, White

No: None

Absent: None

BZA #03-08: Request of Capitol Landing Ventures, LLP for a variance to create parking spaces 8.5 and 8.9 feet in width instead of nine feet as required by Section 21-704 of the Zoning Ordinance for property located at 942-52 Capitol Landing Road. The property is zoned General Business District B-3 and is located on Williamsburg Tax Map Number 408-0A-00-004. The applicant proposes to restripe the existing parking lot, increasing the total number of parking spaces from 52 to 57. Approved.

Chairman Carr introduced the request for a variance and invited the applicant to comment.

Applicant Perry Moore, 103 Saxon Court, York County, stated that the major change requested would be the encroachment into the 10 foot setback area. She said approval of the request would enable restriping of the parking lot resulting in the addition of five parking spaces. Although she agreed that this process involves a lot of effort for only five spaces, the spaces are essential for traffic in the business center, as well as for the safety of those using it. Ms. Moore added that DMV may reopen their office to 5½ days which will help reduce traffic during DMV peak times.

Chairman Carr opened the public hearing.

There being no comment the public hearing was closed.

Board comments included:

- Although there is sympathy for the situation, 8½ feet in width is too narrow. This is a variance request that requires Planning Commission approval as noted in Zoning Ordinance Section 21-704, which regulates parking spaces. This section states that “Planning Commission, as a part of the site plan review process, may approve spaces with minimum dimensions of eight and one-half feet by 18 feet for vehicle storage lots for

- automobile dealers, overflow parking areas and other limited use parking facilities.”
- Since Section 21-97(b)1. in the Zoning Ordinance allows the Board to consider “exceptional narrowness, shallowness, or shape of a specific piece of property...or...exceptional topographic conditions or other extraordinary or exceptional situation or conditions...” and these conditions do not exist in this case, the Board cannot act.
 - It was noted that this case does fulfill the requirement of the above-noted Section regarding “...exceptional situation or conditions...”
 - The Section addresses the property, not the use.

Mr. Kafes moved that the request be denied based on:

- “Condition” in Section 21-97(b) relates to property, not use;
- Section 21-704(b)(2) while not directly applicable, indicates a legislative intent on the part of the City Council that 8½ feet wide spaces are only appropriate in a narrow range of limited use parking situations not present in this case.
- Spaces requested are too narrow for general parking use and public safety problems would be created by approving the request.

The motion died for lack of a second.

Mrs. White stated that she also is concerned about safety issues, but what recourse does a property owner have? Would the applicant need to go before the City Council to change the ordinance?

Ms. Moore responded that off-street parking is not available on adjacent properties, there is a 160 foot right-of-way on Capitol Landing Road and 140 foot on Rt. 143, and there is a 10 foot setback. She added that the area appears to be larger than it truly is 1.29 acres.

Mrs. White reiterated that the situation is not the applicant’s doing, in fact Ms. Moore has been proactive in an attempt to rectify the problem. Mr. Kafes asked if the property might be overdeveloped and noted that this might be an issue for City Council to address.

Mrs. Knudson said she appreciates the applicant’s willingness to expend a good deal of money and effort on the problem. She moved that the request be approved based on fulfillment of Section 21-97(b)2. “No such variance shall be authorized by the Board unless it finds:

- a. That the strict application of this chapter would produce undue hardship.
- b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

- c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance."

Mr. Chohany stated that he will abstain from voting on this case because he is too close to the business partner of Ms. Moore. However, he said that he appreciates the fact that the applicant is going to the trouble and expense of correcting the parking problem, which is very tight on even a good day. He added that he would be compelled to show lenience in this case.

Mrs. White seconded the motion which carried by roll call vote of 3-1-1.

Aye: Carr, Knudson, White

No: Kafes

Abstain: Chohany

Absent: None

BZA #03-05: Request of Colonial Williamsburg Foundation for a special exception in accordance with Article III, Division 12, Section 21-413 of the Zoning Ordinance to move an existing privy structure from 309 East Nicholson Street (Carpenter's Yard Privy) to 401-E East Nicholson Street (Brickyard). The property is zoned Colonial Williamsburg Historic Area CW and is located on Williamsburg Tax Map Number 467-(0A)-00-013A. Approved.

Although there was no representative present, the Board acted on the request for a special exception. Chairman Carr dispensed with the public hearing because there was no one present. There were no questions or comments from the Board.

Mrs. Knudson moved that the request be approved based on fulfillment of Zoning Ordinance Section 21-413 with respect to permitted uses within the Colonial Williamsburg historic area.

Mr. Kafes seconded the motion which carried by roll call vote of 5-0.

Aye: Carr, Chohany, Kafes, Knudson, White

No: None

Absent: None

There being no further business the meeting adjourned at 4:30.

Respectfully submitted,

Michael P. Chohany, Secretary
Board of Zoning Appeals